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7 UNITED STATES DISTRICT COURT
8 WESTERN DISTRICT OF WASHINGTON
9 AT SEATTLE

10 DANIEL E. ANDERSON,

11 Petitioner,

12 v.

13 HAROLD CLARKE,

14 Respondent.

CASE NO. C04-1657JCC-MJB

ORDER

15 This matter comes before the Court on Petitioner's Motion for Issuance of a Certificate of
16 Appealability. (Dkt. No. 24.) Petitioner seeks a certificate of appealability with respect to the Court's
17 adoption of United States Magistrate Judge Monica J. Benton's Report and Recommendation dismissing
18 Petitioner's habeas corpus petition. Having reviewed the materials submitted by the parties and being
19 fully informed, the Court hereby DENIES Petitioner's application for a certificate of appealability.

20 Final orders issued by a federal district court in habeas corpus proceedings are reviewable by the
21 circuit courts of appeal. 28 U.S.C. § 2253(a). Prior to such appellate review, however, Petitioner must
22 first obtain a certificate of appealability ("COA") pursuant to 28 U.S.C. § 2253(c). When a writ of
23 habeas corpus is denied on procedural grounds, a court may issue a COA only if Petitioner can show that
24 "jurists of reason would find it debatable whether the petition states a valid claim of the denial of a
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1 constitutional right and that jurists of reason would find it debatable whether the district court was
2 correct in its procedural ruling.” Stack v. McDaniel, 529 U.S. 473, 484 (2000). In adopting Judge
3 Benton’s Report and Recommendation, this Court dismissed Petitioner’s claims that the Washington
4 courts violated his Fifth, Sixth, Eighth, and Fourteenth Amendment rights by improperly and inadequately
5 reviewing “newly discovered evidence of his actual innocence concerning his 1979 conviction.” (Dkt. 15
6 at 18.) The Court agreed with Judge Benton’s conclusion that Petitioner’s claims were procedurally
7 barred because he failed to pursue direct or collateral review while he was in custody on the 1979
8 conviction. Additionally, Petitioner’s belated challenges were barred by the one-year time limit
9 prescribed by RCW 10.73.090. (R&R at 16.)

10 Petitioner submitted no additional documents with his notice of appeal. (Dkt. 24.) The Court
11 construes this to mean that Petitioner intended to resubmit his previously articulated argument.
12 Therefore, Petitioner neither shows additional information as to why Petitioner neither shows reason why
13 a reasonable jurist would find it debatable whether the Court was correct in its procedural ruling, nor
14 makes an argument as to why his constitutional claims have merit. Accordingly, Petitioner did not meet
15 the requirements for this Court to issue a certificate of appealability.

16 For these reasons, the Court hereby DENIES Petitioner’s Application for a Certificate of
17 Appealability.

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19 SO ORDERED this 17th day of May, 2005.

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UNITED STATES DISTRICT JUDGE

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